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**ATTORNEYS FOR DEFENDANT**  
**ANDREW H. COHEN**

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES INVESTOR PROTECTION**  
**CORPORATION**

**PLAINTIFF-APPLICANT,**

**ADV. PRO. No. 08-01789 (BRL)**  
**SIPA LIQUIDATION**

**V.**

**BERNARD L. MADOFF INVESTMENT**  
**SECURITIES, LLC**

**DEFENDANTS**

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**IN RE:**

**BERNARD L. MADOFF,**

**DEBTOR.**

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**IRVING H. PICARD, TRUSTEE FOR THE**  
**LIQUIDATION OF BERNARD L. MADOFF**  
**INVESTMENT SECURITIES, LLC**

**PLAINTIFF,**

**ADV. PRO. No. 10-04311 (BRL)**

**V.**

**ANDREW COHEN**  
**DEFENDANT.**

**ANSWER TO COMPLAINT, AFFIRMATIVE**  
**DEFENSES, & COUNTERCLAIMS OF**  
**ANDREW COHEN**

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Defendant Andrew H. Cohen ("Cohen" or "defendant"), by and through his undersigned counsel, as and for his Answer, Affirmative Defenses, and Jury Demand to the Complaint of Irving H. Picard, as Trustee ("Trustee") for the Liquidation of Bernard L. Madoff Securities ("BLMIS"), state and allege as follows:

1. The allegations contained in ¶ 1 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies that he received avoidable transfers from BLMIS and are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in ¶ 1 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to this Court.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 2 of the Trustee's Complaint.

3. The allegations contained in ¶ 3 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding a court of proper jurisdiction.

4. The allegations contained in ¶ 4 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information the allegations contained in this paragraph are denied.

5. The allegations contained in ¶ 5 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegation.

6. The allegations contained in ¶ 6 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegation.

7. Defendant admits the allegations contained in ¶ 7 of the Trustee's Complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 8 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 9 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 10 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 8 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law to a court of proper jurisdiction.

12. The allegations contained in ¶ 12 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 13 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 14 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

15. The allegations contained in ¶ 15 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

16. The allegations contained in ¶ 16 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

17. The allegations contained in ¶ 17 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 17 of the Trustee's Complaint, leave plaintiff to

its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

18. Defendant denies the allegations set forth in paragraph ¶18 of the Trustee's Complaint, leave plaintiff to its proofs and, to the extent the language recites conclusions of law, refers all questions of law regarding the same to a court of proper jurisdiction.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶19. of the Trustee's Complaint and to the extent a response is required leave plaintiff to its proofs, and refer all questions of law regarding the same to a Court of proper jurisdiction.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 20 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 21 of the Trustee's Complaint,, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction

22. Defendant admits that they received monthly statements from BLMIS. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in ¶ 22 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 23 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 24 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 25 of the Trustee's Complaint, leave plaintiff to its proofs, and refer all questions of law regarding the same to a court of proper jurisdiction.

26. The allegations contained in ¶ 26 of the Trustee's Complaint are legal conclusions to which no response is required, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 27 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 28 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 29 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 30 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 31 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 32 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

33. The allegations contained in ¶ 33 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 33 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 34 of the Trustee's Complaint, leave

plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

35. The allegations contained in ¶ 35 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 35 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

36. The allegations contained in ¶ 36 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 36 of the Trustee's Complaint

37. The allegations contained in ¶ 37 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 37 of the Trustee's Complaint

38. The allegations contained in ¶ 38 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 38 of the Trustee's Complaint

39. The allegations contained in ¶ 39 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 39 of the Trustee's Complaint

40. Defendant admits the allegations contained in ¶ 40 of the Trustee's Complaint.

41. Defendant admits the allegations contained in ¶ 41 of the Trustee's Complaint.

42. Defendant admits that an objection was not filed in reliance upon the Trustee's instruction that customer claims would be governed by the determinations in an appeal



before the Second Circuit Court of Appeals concerning the Trustee's "net equity" and that this method for claims presentation would apply to all customer/claimants.

43. The allegations contained in ¶ 43 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 43 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

**ANSWERING THE FIRST COUNT OF THE COMPLAINT**

44. As to the allegations of the Second Count of the Complaint, the defendant repeats and reallege the responses to the ¶¶ 1-43 with the same force and effect as if set forth at length herein.

45. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 45 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

46. The allegations contained in ¶ 46 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 46 of the Trustee's Complaint

47. The allegations contained in ¶ 47 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 47 of the Trustee's Complaint

48. The allegations contained in ¶ 48 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 48 of the Trustee's Complaint

49. Defendant denies the allegations contained in ¶ 49 of the Trustee's Complaint

**ANSWERING THE SECOND COUNT OF THE COMPLAINT**

50. As to the allegations of the Third Count of the Complaint, the defendant repeats and reallege the responses to the paragraphs 1-49 with the same force and effect as if set forth at length herein.

51. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 51 of the Trustee's Complaint and leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

52. The allegations contained in ¶ 52 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 52 of the Trustee's Complaint.

53. The allegations contained in ¶ 53 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 53 of the Trustee's Complaint.

54. The allegations contained in ¶ 54 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 54 of the Trustee's Complaint, leave plaintiff to

its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

55. The allegations contained in ¶ 55 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 55 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

56. The allegations contained in ¶ 56 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 56 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction..

57. The allegations contained in ¶ 57 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 57 of the Trustee's Complaint

58. Defendant denies the allegations contained in ¶ 58 of the Trustee's Complaint

**ANSWERING THE THIRD COUNT OF THE COMPLAINT**

59. As to the allegations of the Third Count of the Complaint, the defendant repeats and reallege the responses to the ¶¶ 1-58 with the same force and effect as if set forth at length herein

60. The allegations contained in ¶ 60 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required,

defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 60 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

61. The allegations contained in ¶ 61 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 61 of the Trustee's Complaint.

62. The allegations contained in ¶ 62 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 62 of the Trustee's Complaint.

63. Defendant denies the allegations contained in ¶ 63 of the Trustee's Complaint.

**ANSWERING THE FOURTH COUNT OF THE COMPLAINT**

64. As to the allegations of the Fourth Count of the Complaint, the defendant repeats and reallege the responses to the ¶¶ 1-63 with the same force and effect as if set forth at length herein.

65. The allegations contained in ¶ 65 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 65 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

66. The allegations contained in ¶ 66 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 66 of the Trustee's Complaint.

67. The allegations contained in ¶ 67 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 67 of the Trustee's Complaint.

68. The allegations contained in ¶ 68 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 68 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

69. The allegations contained in ¶ 69 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 69 of the Trustee's Complaint.

**ANSWERING THE FIFTH COUNT OF THE COMPLAINT**

70. As to the allegations of the Fifth Count of the Complaint, the defendant repeats and reallege the responses to the ¶¶ 1-69 with the same force and effect as if set forth at length herein.

71. The allegations contained in ¶ 71 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 71 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a Court of proper jurisdiction.

72. The allegations contained in ¶ 72 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 72 of the Trustee's Complaint

73. The allegations contained in ¶ 73 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 73 of the Trustee's Complaint.

74. The allegations contained in ¶ 74 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 74 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

75. Defendant denies the allegations contained in ¶ 75 of the Trustee's Complaint.

**ANSWERING THE SIXTH COUNT OF THE COMPLAINT**

76. As to the allegations of the Fifth Count of the Complaint, the defendant repeats and reallege the responses to the ¶¶ 1-75 with the same force and effect as if set forth at length herein.

77. The allegations contained in ¶ 77 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 77 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

78. The allegations contained in ¶ 78 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 78 of the Trustee's Complaint.

79. The allegations contained in ¶ 79 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 79 of the Trustee's Complaint.

80. The allegations contained in ¶ 80 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶ 80 of the Trustee's Complaint, leave plaintiff to its proofs and refer all questions of law regarding the same to a court of proper jurisdiction.

81. The allegations contained in ¶ 81 of the Trustee's Complaint are legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations contained in ¶ 81 of the Trustee's Complaint.

**WHEREFORE**, defendant Andrew H. Cohen respectfully request judgment dismissing the Complaint in its entirety, together with costs, disbursements, and expenses of defending these counterclaims, including attorneys' fees and for such other and further relief this Court may direct.

**AS AND FOR DEFENDANT'S AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief may be granted and the answering defendants reserve the right to move to dismiss.

2. The Complaint is barred pursuant to the statute of limitations and/or the statute of repose and the answering defendants reserve the right to move to dismiss.

3. The Court lacks subject matter jurisdiction.
4. The Court lacks personal jurisdiction.
5. Venue is improperly laid.
6. Any alleged transfers made to the Defendants were received in good faith and/or for value and in discharge of an antecedent debt.
7. Defendant is entitled to a reduction and set-off for any and all claims defendants may assert against BLMIS.
8. The Adversary Proceeding has not been brought for the benefit of the estate or its creditors.
9. The Complaint is barred pursuant to the doctrines of laches, waiver and/or estoppel
10. The Plaintiff has acted derivatively and/or individually with unclean hands
11. Plaintiff is barred by the doctrine of *in pari delicto*.
12. The Trustee lacks standing and/or authorization to maintain this action pursuant to SIPA and/or the Bankruptcy Code.
13. The defendants reserve the right to amend its answer to assert additional defenses based upon continuing discovery.

**WHEREFORE**, defendant Andrew H. Cohen respectfully request judgment dismissing the Complaint in its entirety, together with costs, disbursements, and expenses of defending these counterclaims, including attorneys' fees and for such other and further relief this Court may direct.

**AS AND FOR DEFENDANT'S ADDITIONAL AFFIRMATIVE DEFENSES AND FIRST COUNTERCLAIM**

1. BLMIS, through misrepresentation, concealment and knowing fraud, and in



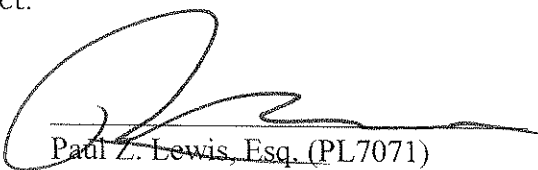
breach of its fiduciary duties, caused Defendants to invest monies of not less than \$820,000 with BLMIS and further issued account statements misrepresenting the value of those funds.

2. Defendants, in reliance on those BLMIS statements and representations, believed that they possessed assets in not less than the amounts fraudulently represented in defendants' account statements and in a sum in excess of one-million dollars.

3. As a result of BLMIS acts, defendants suffered damage including, but not limited to, payment of taxes for income not actually earned, loss of time value of the principal, and legal fees incurred as a result of the Trustee's avoidance action.

**WHEREFORE**, Defendants Edward and Suzanne Coughlin respectfully request judgment in an amount not less than \$2.5 million together with costs, disbursements, and expenses of defending these counterclaims, including attorneys' fees and for such other and further relief this Court may direct.

Dated: June 13, 2011



Paul Z. Lewis, Esq. (PL7071)  
Lewis & McKenna  
Counsel for Defendant  
Andrew H. Cohen

**Jury Demand**

Defendants respectfully request a jury trial on all issues so triable.



Paul Z. Lewis, Esq. (PL7071)